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May 15, 1996

Hon. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

VIA FEDERAL EXPRESS

Re: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

CC Docket No. 96-98

Dear Mr. Caton:

Enclosed please find an original and 4 copies of the comments of the Staff of the New Jersey Board of Public Utilities' Division of Telecommunications for filing in the above matter. In addition, as requested by the Commission, two additional sets of comments have been enclosed as "extra public copies."

Kindly place the Board of Public Utilities' Division of Telecommunications on the service list for this docket.

Please return one copy marked "Filed" in the enclosed addressed, stamped envelope.

Thank you for your consideration.

Very truly yours,

James A. Nappi, Esq.
Secretary

/bc
Enclosure

cc 2

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of
Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

CC Docket No. 96-98

Comments of the Staff of the
New Jersey Board of Public Utilities
on Notice of Proposed Rulemaking

The Staff of the New Jersey Board of Public Utilities ("Staff") respectfully submits the following comments to the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission (hereinafter "Commission") on April 19, 1996. The New Jersey Board of Public Utilities ("Board") has regulatory authority over telephone utilities in the State of New Jersey pursuant to N.J.S.A. 48:2-13 et. seq.

Comments on the NPRM are keyed to the NPRM paragraph number (or range of numbers) to which the comment is directed.

(27-32) The Act leaves to states the final decisions on negotiated agreements, in that the Federal District Court is the appeal level for aggrieved parties. Therefore, we do not agree that national rules for interconnection are preferable, in view of the depth and scope of the Act.

(33) We suggest that explicit national rules could unduly restrict states' options to address unique approaches to implementing the Act based upon local technological, geographic or demographic variables.

(36) We do not support the tentative conclusion that arbitrated agreements and statements of generally available terms should comply with a single set of standards. It is our view that the market should drive the agreements without artificial fettering.

(45) We suggest that state commissions must be permitted by the Commission's rules the authority to impose on CLECs the obligations of ILECs since the mere possibility of such reciprocity could inject increased practicality in CLEC-ILEC relationships.

(46-48) We believe the definition of "good faith" must be more explicit as it relates to negotiations. Although referred to in a technical rather than legal sense, current law references describe the term "good faith" as generally abstract and intangible without specific meaning or measurable standards.

(53-54) In our view, "interconnection" per section 251(c)(2) refers to the physical linking of networks and for pricing purposes excludes the transport and termination functions. This viewpoint is based on the observations that: (a) both physical facilities connections, and transport and termination capabilities, are necessary for meaningful interconnection; and, (b) the associated costs, and therefore pricing, of the former and latter are mutually independent considerations.

(56-57) We agree with the thoughts expressed in (56) that "we seek to avoid a static definition;" and (57) that "as technology advances, the number of points at which interconnection is feasible may change" and that "the federal standard for minimum interconnection points should change accordingly" (emphasis added). We agree with the expressed tentative conclusion that risks to network reliability should be considered in defining points of interconnection and that the party alleging possible harm (CLEC or ILEC) should be required to substantiate the claim in detail.

(57-58) We agree with the tentative conclusion that if an ILEC currently provides, or has provided in the past, interconnection to any other carrier at a given point, that ILECs employing similar technology should be required to make interconnection at such points available to requesting carriers. However, we suggest that the terminology be more tightly defined; i.e. does "carrier" mean another LEC, an IXC, a cellular or paging or other wireless carrier, etc.? We would suggest that the term be defined as any common carrier. Such a definition should considerably expand the points of required interconnection beyond those required were the definition of "carrier" limited to that of a LEC or an IXC.

(61) We suggest that the judgments of "just and reasonable" terms and conditions for interconnection be split from judgments of "nondiscriminating" terms and conditions. The latter might be accomplished by requiring that, or providing some incentive for, ILECs to file statements of generally available terms (SGAT) with state commissions. By analogy, this would provide a "menu" for CLECs; SGAT being the telecom analog of "prix fix" while negotiations would be the analog of "a la carte." That is, the SGAT would be always available to any CLEC feeling discriminated against in negotiation as well as becoming a public statement for comparison to other SGATs.

(63) Under the current billing policy for the aggregated telephone network, usage is dependent upon the completed telephone call; i.e. attempts for whatever reason do not result in billing. Thus, it would appear that basic pecuniary business

sense should incent carriers toward an acceptable local of quality. In the event that competitive zeal outweighs such interests, we suggest that a set of technical network interpretability and traffic engineering criteria be developed by the industry itself through (for example) ATIS (Alliance for Telecommunications Industry Solutions), NECA (National Exchange Carrier Association, etc.

(68-73) We agree with the tentative conclusion that national technical standards for physical and virtual collocation be adopted since the issue is no longer new and the Commission should have a sufficient record from past proceedings to draft such standards.

(71) We do not agree with the tentative conclusion that the definition of the term "premises" includes, in addition to ILEC COs or tandems, "all buildings or similar structures owned or leased by ILECs that house LEC network facilities." In our view, the suggested definition is too broad in scope and would include even small CEVs (controlled environment vaults housing (for example) subscriber line carrier or other multiplexing equipment. Physical access to, and physical security of, those many widely dispersed installations could become a network reliability issue without copious and expense-generating controls. In our opinion, optimal opportunities for interconnection would be gained by defining "premises" as the structure or edifice housing an end office switch, a tandem switch or a remote service module extension from a switch. We also suggest that the final definition of "premises" be labelled as a minimum to allow for evolution.

(72) In our view, the essence of the physical/virtual collocation issue in the context of this paragraph lies within the scope of paragraph (71). That is, if "premises" is more tightly defined in scope, along the lines we suggest, the reliability and security considerations will be significantly ameliorated.

(74-77) We support the tentative conclusion that the Commission should identify "a minimum set of network elements that ILECs must unbundle and leave room to revisit the issue as competing services, technology and carriers evolve.

(78) We support the tentative conclusion that preserves states' authority to impose state requirements in states' review of arbitrated agreements, to the extent that such requirements are consistent with Commission rules.

(79) We agree that the establishment of minimum national interpretability requirements would be beneficial to all parties. We suggest that industry operators and manufacturers are probably best equipped to suggest such requirements; perhaps through ATIS or NECA.

(80) In our view, it is unlikely that varying technical requirements would assist in achieving the goals of the Act. Indeed, we suggest that the industry itself will quickly gravitate to mutually agreeable technical requirements to lower costs.

(87) We suggest that the Commission address unbundled access "at any technically feasible point" in terms of the minimum access necessary in the short term to allow competition to develop. While we empathize with the dichotomy of providing meaningful competitive access while simultaneously protecting network reliability, we counsel caution lest implicit terms such as "at any technically feasible point" be pushed beyond the envelope of technical integrity (emphasis added). In practical terms, we also suggest that "access" and "premises" are related in terms of requirements; please see comments on paragraph (71).

(94-97) We do agree that ILECs should be required to provide local loops as unbundled network elements as proposed. However, we are uncomfortable with the tentative conclusion to require further unbundling of the local loop, at least initially. Increasing amounts of fiber in loops, subscriber line carrier, T-1, SONET and multiplexing in general have changed the character of the local loop in recent years. While we agree that the intent is laudable, we respectfully recommend that local sub-loop unbundling be held in abeyance while enabling technologies and operating systems supports develop.

(98-103) While we support creative disaggregations of switch capability, such as the "virtual" or "platform" concept in consideration in Illinois, we suggest that the Commission require only unbundling by "port" at this time. Switch hardware and software currently driving the national network is highly integrated and optimized. Thus, requiring ILECs to adopt any theoretical switching paradigm in the short term (i.e. before switch manufacturers evolve enabling hardware and software) could put the reliability of the entire network in jeopardy.

(107-116) We agree with the tentative conclusion that ILECs be required to unbundle signalling systems and databases from other network elements. We suggest that the state variations described in the NPRM may be more driven by the design of the historical ILEC network infrastructure in the states rather than any recent state requirements. In the event that more disaggregated unbundling of signalling system and database network elements are deemed desirable in the short term, we would recommend that the Commission solicit explicit comments from the major network facilities manufacturers, if such commentary does not develop in the proceeding, before developing more disaggregated element requirements.

(117) §251 (d) of the Federal Act requires the FCC "to complete all actions necessary to establish regulations to implement the requirements" of §251. While the language is broad in its scope,

we do not believe that it should be interpreted as a requirement for the FCC to define specific terms to develop a national definition of "just and reasonable" and "nondiscriminatory" for all states to use when setting rates or approving negotiated agreements between carriers.

Furthermore, a narrow definition for such terms as "wholesale rates" and "avoided costs" should be avoided. States should be given the latitude to establish their own approach to these and other important issues in an autonomous fashion.

The Federal Act clearly defines the term wholesale rate as the retail rate less avoided costs in §251(d)(4). It is not necessary for the FCC to further elucidate what the terms are meant to connote. The FCC, however, should be instrumental in providing guidelines for their development, but should not set a rigid standard that would preclude individual states from formulating different and innovative approaches.

As for the terms just and reasonable, and nondiscriminatory, each state should be permitted to apply its own test to ensure that rates are just and reasonable, and nondiscriminatory. A final rule should codify this requirement but not mandate the use of a specific test in recognition that each case brought to a state commission contains unique circumstances that should be dealt with on a case by case basis. It is generally our opinion that the FCC should limit their involvement in local issues to areas that clearly are needed for a unified national policy.

The FCC's focus should be in defining and implementing basic parameters to ensure that e.g., wholesale rates are filed by Local Exchange Carriers within a specific time frame to comply with the Federal Act and provide a list of known costs that may be avoided, but not necessarily obligate their use when calculating wholesale rates. Additionally, the FCC could establish a rule that would permit a state commission to defer to it for guidance on issues concerning the justness and reasonableness of rates if there is a situation where the state does not feel qualified to render a decision.

(119-120) The establishment of a national pricing policy would arguably increase the predictability of rates and indeed help facilitate the negotiation of agreements between LECs and potential competitors as indicated in the NPRM. However, level concerns should remain with these closest to those concerns, namely the states.

(172-173) Regardless of how wholesale rates are ultimately determined, the FCC should not lose sight that one of the major goals of the Federal Act is to encourage facilities-based competition and not to foster a reliance on the existing facilities of the incumbent Local Exchange Carriers and simply redistribute revenue to competing carriers by promoting resale.

A mechanism should be established to promote the construction of competing independent networks. Otherwise, the expected competition will be either slow in developing or fail to materialize.

(175) The FCC should consider the ramifications of permitting the ILECs to base wholesale rates upon the existing retail rate structure and simultaneously offer its services at promotional or discounted rates to its own retail customers. Such an arrangement would give the ILEC an unfair competitive advantage, especially for services that contain high gross margins creating situations where the incumbent LEC could impose predatory pricing tactics. This would certainly have the effect of thwarting competition and be contrary to Congress' goal.

The FCC should consider imposing a rule that requires the incumbent LEC to make discounted services available for resale consistent with the wholesale rate requirement, i.e., the discounted service less avoided cost. In the event the FCC elects not to adopt such a requirement, the incumbent LEC should not be permitted to discount rates by more than established avoided costs in order to ensure that the playing field is level.

(189-194) In our view, it is clear that ILECs as well as facilities based IXCs should be required to provide public or industry forum notice of technical changes if the national network is to continue to function efficiently. Major operators already use some form of NOC (network operations center) to remotely monitor the status of the operator's switches, trunking and call processing. Some operators have linked SCCs (switching control centers), which monitor a bounded sector of the operators' network and provide initial diagnostics and remote maintenance, to the NOC. These NOCs have become an integral part of technical information exchange in the current BOC/IXC environment and have developed to support the operators' need to keep the calls -- and, thus, revenues -- flowing. The SCCs and NOCs evolved, and continue to evolve with technology, to support the operators' best interests and may be an optimal medium for technical change notice in the new competitive network. We suggest that the Commission requirements provide incentives for continued evolution of NOC to NOC technical information transfer, noting that this evolution, to date, has proceeded without governmental intervention.